IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

MFA.No. 1045 of 2002(A)

OP.MV.1041/1997 of MACT,TRIVANDRUM
.....

APPELLANT/RESPONDENT NO.1:

RAJENDRAN NAIR, MANIKANTA VILASOM,
KOLIYAKODU, POOZHIKUNNU, NEMON P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.

RESPONDENTS/PETITIONERS 1 TO 4 & RESPONDENT NO.2 IN THE OP:

1. S.SWARNAMMA, KUNNUMPURATHU VEEDU,
VALIAVENKADU, MEMALA P.O., VITHURA,
THIRUVANANTHAPURAM.

2. KALADEVI R.S., RESIDING AT DO. DO.

3. R.S.GANESH, RESIDING AT DO. DO.

4. R.S.RAMESH, RESIDING AT DO. DO.

5. SASIDHARAN NAIR, S/O.KRISHNA PILLAI, SARADA
BHAVAN, THRIKKANNAPURAM, POOZHIKKUNNU,
NEMOM P.O., THIRUVANANTHAPURAM.

R1 TO R4 BY ADV. SRI.VAZHUTHACAUD R.NARENDRAN NAIR
SRI.K.T.SHYAMKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 1045 of 2002

JUDGMENT

Koshy, J.

The respondents filed an application before the Motor Accidents Claims Tribunal, Thiruvananthapuram contending that sixteen year old son of the first respondent died in a motor accident due to the negligence of the driver of the vehicle owned by the appellant. The Tribunal accepted the above contention on the basis of evidence and found that as there was no valid insurance policy for the vehicle in question at the time of the accident, the driver and owner of the vehicle were jointly and severally liable for payment of compensation and a total amount of Rs.2,01,500/- was ordered to be paid as compensation.

2. The contention raised by the appellant is that his vehicle was not involved in the accident. He contended that the vehicle was in the workshop

at the time of the accident and that the driver was acquitted for lack of identification in the criminal case. The accident occurred on 10.1.1997. On that day itself FIR was lodged mentioning the appellant's vehicle as the vehicle involved in the accident. Scene mahazar was prepared on 14.1.1997 and MVI report also shows that it was the appellant's vehicle, which was damaged. Further, on investigation, the driver was charge-sheeted. Of course, the criminal court acquitted him because no evidence was adduced to prove the identity of the driver, as the witnesses turned hostile. In the Motor Accidents Claims Tribunal, only the evidence adduced in the case need be looked into. Merely because the driver was acquitted as identity was not proved beyond doubt, these findings are not binding on the Tribunal. From the evidence in the case, it is clear that the appellant's vehicle was involved in the accident. The appellant did not file any written statement before the court and

further, no documents were produced to show that the appellant's vehicle was in the workshop on the date of the accident. We see no reason to interfere with the finding of the Tribunal that the appellant's vehicle was involved in the accident. No such contention was raised before the Tribunal also.

3. With regard to the quantum of compensation, the Tribunal assessed notional income at Rs.1,500/- per month for a sixteen year old boy, who died in the accident. Even though it was claimed that he was earning Rs.3,000/- per month, that was disbelieved by the Tribunal. In the circumstances of the case, we are of the opinion that the notional income fixed in the second schedule of the Motor Vehicles Act can be taken for consideration. If that be so, the yearly notional income would be Rs.15,000/- and after deducting one third, only Rs.10,000/- can be taken for calculating compensation for loss of dependency and by taking

16 as the multiplier, compensation payable for loss of dependency will be Rs.1,60,000/-. The Tribunal awarded Rs.1,92,000/-. Therefore, the compensation awarded will be reduced by Rs.32,000/-. The total compensation payable will be Rs.1,69,000/-. The appellant should pay the above amount with interest and costs, as ordered by the Tribunal.

The appeal is allowed in part.

(J.B.Koshy, Judge)

19th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.1045 of 2002

JUDGMENT

19th June, 2007